

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TruePosition, Inc.,

**Plaintiff/
Counterclaim-Defendant,**

v.

Andrew Corporation,

**Defendant/
Counterclaim-Plaintiff.**

Civil Action No. 05-747-SLR

**APPENDIX C TO TRUEPOSITION'S REPLY MEMORANDUM IN
SUPPORT OF ITS MOTION TO EXCLUDE THE INVALIDITY
TESTIMONY OF DR. DAVID GOODMAN PURSUANT TO FEDERAL
RULE OF EVIDENCE 702**

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TABLE OF CONTENTS

**APPENDIX C TO TRUEPOSITION'S REPLY MEMORANDUM IN
SUPPORT OF ITS MOTION TO EXCLUDE THE INVALIDITY
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RULE OF EVIDENCE 702**

Excerpts from Brian Agee deposition taken January 24, 2007	C1-C6
Excerpts from Dr. David Goodman deposition taken January 15, 2007	C7-C10

Brian G. Agee, Ph.D. January 24, 2007

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

- - -
TRUEPOSITION, INC.,)
Plaintiff/Counterclaim)
Defendant, ..)
vs.) C.A. No. 05-00747-SLR
ANDREW CORPORATION,)
Defendant/)
Counterclaim Plaintiff.)
_____)

VIDEOTAPED DEPOSITION OF BRIAN G. AGEE, Ph.D., P.E.

Philadelphia, Pennsylvania

Wednesday, January 24, 2007

8:20 a.m.

Job No.: 25500251

Pages: 1 - 191

Reported By: Debra A. Whitehead

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C1

Brian G. Agee, Ph.D. January 24, 2007

Page 146	Page 148
<p>1 the same thing. 2 So, for instance, in this case "identifying 3 individual cellular telephone signals," and 4 "identifying the cellular telephones," the way you've 5 defined this, it's clear from the context that you 6 want these to be the same thing. 7 And in this case, I would agree, under this 8 definition. And I treated them as the same, when I 9 was developing my claim construction. 10 Q So it's correct to say that the database 11 claimed in Claim 32 of the '144 patent must identify 12 the actual cellular telephones themselves that are 13 being located; correct? 14 MR. MARCUS: Objection. Vague and 15 confusing. 16 A Why don't you repeat the question back to 17 me. 18 MR. PARKS: Could you read it back, please. 19 I'm sorry. 20 (The reporter read the record as 21 requested.) 22 MR. MARCUS: Same objection. I also think 23 it calls for a legal conclusion. 24 A (Continued.) So I say that, under both 25 claims constructions, the database would need to</p>	<p>1 first? 2 MR. PARKS: Yes, let's mark them as the 3 next two exhibits, so we have them in the record. 4 (Documents marked for identification as 5 Agee Exhibits No. 6 and 7.) 6 (Discussion off the record.) 7 VIDEO SPECIALIST: This is the end of Tape 8 4 at 2:57. 9 Short recess.) 10 VIDEO SPECIALIST: We are on the record at 11 3:13. This is Tape 5 of Brian G. Agee's deposition. 12 BY MR. PARKS: 13 Q Dr. Agee, is it your opinion that the Kono 14 reference teaches a command response approach for 15 location of a cellular phone occurs only after a 16 command to locate is sent from the cellular network? 17 A So I guess I'll ask you to clarify that. 18 Q Can you turn to Page 16 of your December 19 report. It is the one that's been marked as Agee 20 Exhibit 1. 21 A Right. Oh, got it. Okay. 22 Q And if I could direct your attention to 23 Subsection 3.3.1.3, where you're distinguishing the 24 Kono reference from the '144 patent claims. 25 And if you could read into the record the</p>
Page 147	Page 149
<p>1 contain data identifying the cellular telephones, 2 either the cellular telephones or some number linked 3 only with that mobile cellular telephone, jumping in 4 between the two -- back and forth between the two 5 claim constructions. 6 Q How do you interpret the word "subscribers" 7 in Claim 32 of the '144 patent? 8 A As a comment, this isn't something I 9 considered when I was writing my report, so I'm giving 10 an answer that is off the cuff. 11 I would interpret it the same way that I 12 would interpret "subscribers" in -- in Element C of 13 Claim 22. 14 Q Dr. Agee, if we could mark as the next two 15 exhibits the TruePosition claim construction and 16 Andrew claim construction that you have been referring 17 to as we've gone through that exercise. 18 MR. PARKS: And, actually, I know we have 19 been going for a while. If you -- I don't know how 20 close we are on the videotape. But if you would like 21 to take a break, we can take one now, or we can keep 22 going. It's up to you. 23 THE WITNESS: Why don't we take a short 24 break. 25 MR. MARCUS: Do you want to mark them</p>	<p>1 first bullet point that appears under Section 3.3.1.3 2 of your December report. 3 A Okay. "Kono fails to disclose or teach any 4 locating means for automatically determining the 5 locations of cellular telephones. Instead, it teaches 6 a command respond approach in which position location 7 only occurs after a command position location call is 8 sent from either the exchange office based on 9 unexplained criteria or the base transceiver station." 10 Q And, so, my question, Dr. Agee, is, is it 11 your opinion that Kono teaches a command response 12 approach for location of a cellular phone occurs only 13 after a command to locate is sent from the cellular 14 network? 15 A Yes, that's true. 16 Q And in rendering the opinions expressed in 17 your December report, you were distinguishing the '144 18 patent from a system like Kono that locates a cellular 19 phone only after a command to locate is sent from the 20 cellular network; correct? 21 MR. MARCUS: I am going to object. That -- 22 that is -- assumes facts not in evidence, somewhat 23 misleading. 24 A No, that was not my opinion. This was an 25 error, that's why I took it out in the January report.</p>

38 (Pages 146 to 149)

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C2

Brian G. Agee, Ph.D. January 24, 2007

<p style="text-align: right;">Page 150</p> <p>1 Q I want to focus on the opinions you had 2 when you submitted your December report, for the time 3 being. Okay? 4 A Okay. 5 Q When you submitted your December report, 6 isn't it correct to say that you were distinguishing 7 the '144 patent from a system like Kono that locates a 8 cellular phone only after receiving a command from the 9 cellular network to locate the phone? 10 MR. MARCUS: Objection. Asked and 11 answered, misstates his testimony. 12 A Why don't you repeat the question again. 13 MR. PARKS: Could you read the question 14 back, please. 15 (The reporter read the record as 16 requested.) 17 A (Continued.) No. 18 Q What, then, was the purpose of including 19 the language that's set forth in the first bullet 20 point of Section 3.3.1.3 of your report that says 21 exactly what I just asked in my prior question? 22 A At a point prior to submitting this report, 23 well prior to submitting this report, I was of the 24 opinion that you expressed. 25 Q And what opinion is that?</p>	<p style="text-align: right;">Page 152</p> <p>1 Q Do you recall what month? 2 A Yes; it was in December. 3 Q Was it after December 22? 4 A No. 5 Q Was it after December 15? 6 A Possibly; probably. 7 Q How did you, as you testified, come to the 8 realization that you made an error in your December 9 report by including the language in the first bullet 10 point under Section 3.3.1.3? 11 A So you're asking the process by which I 12 came to that realization? 13 Q I'm trying to find out, yeah, how -- you 14 testified that you made an error. How did the error 15 come to your attention? 16 A The error came to my attention by 17 continually -- by my continuous rereading of the Stilp 18 patent and the patent wrapper. 19 Q In terms of the language itself in your 20 report that appears in the first bullet point of your 21 December report under Section 3.3.1.3, did counsel for 22 TruePosition first suggest to you that you change that 23 language, that the language might be in error? 24 A No. 25 Q Was that a suggestion that you made on your</p>
<p style="text-align: right;">Page 151</p> <p>1 A That -- that Kono -- that the fact that 2 Kono teaches a command respond approach to -- to do 3 its position location distinguishes it from the '144 4 patent. 5 I had -- actually, can I keep going? 6 Q Please. 7 A Okay. So I was of that opinion at an early 8 point in my analysis, and I abandoned that opinion 9 well before this report went out. 10 What happened was that, I simply failed to 11 take this terminology out of the report. It was a 12 simple error on my part. It should have been out of 13 the report when it was submitted in December. 14 Q When did you, as you just testified, 15 abandon the opinion that's set forth in the first 16 bullet point under Section 3.3.1.3 of your December 17 report? 18 A After I -- I abandoned that opinion after I 19 came to the realization that I was misunderstanding 20 the word "initialize" in the '144 patent. 21 Q On what date did you come to the 22 understanding that you were misinterpreting the word 23 "initialize" in the '144 patent? 24 A Oh, I have no idea. Maybe a week in, a 25 week into the analysis. I can't recall.</p>	<p style="text-align: right;">Page 153</p> <p>1 own, independent of counsel for TruePosition? 2 MR. MARCUS: I am going to object. The 3 question is vague. I think -- I am having a hard time 4 understanding it. 5 A I think it was. It's -- I think it was. 6 It certainly wasn't a position that -- that 7 I was -- that I was asked to take; that never -- no 8 conversations of that sort ever occurred. 9 That's all I'll say right now. That's all 10 I think I can say right now. 11 Q Before submitting your January report in 12 which you deleted the language in the first bullet 13 point of Section 3.1.3 of your December report, did 14 you discuss with TruePosition's counsel deleting that 15 language? 16 MR. MARCUS: I'm just going to make an 17 objection. Just, you keep saying, "the bullet." I 18 don't think he deleted everything. But that's... 19 A Okay. Can you read the question back to 20 me. 21 (The reporter read the record as 22 requested.) 23 A (Continued.) No. 24 Q After you submitted your December report, 25 did you read through your December report?</p>

39 (Pages 150 to 153)

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C3

Brian G. Agee, Ph.D. January 24, 2007

Page 154	Page 156
<p>1 A No, I didn't.</p> <p>2 Q If you didn't read your December report</p> <p>3 after submitting it, how did it come to your attention</p> <p>4 that you, as you testified, made an error in the first</p> <p>5 bullet point that appears under Section 3.3.1.3 of</p> <p>6 your December report?</p> <p>7 A David Marcus called me up on January the</p> <p>8 2nd and said, "Brian, I'm reading through your report,</p> <p>9 and you made an error, I think. Why don't you go take</p> <p>10 a look at this and tell me if you agree."</p> <p>11 Q And how did you respond to Mr. Marcus'</p> <p>12 statement?</p> <p>13 A I said, "I'll look at the report," and I</p> <p>14 did.</p> <p>15 And as soon as I saw this, I realized this</p> <p>16 was an error and called him back and said, "I made a</p> <p>17 mistake. What should I do?"</p> <p>18 Q And how did Mr. Marcus respond?</p> <p>19 A He said, "Correct the mistake and send me a</p> <p>20 corrected copy of the report." I did; within a half</p> <p>21 an hour gave him a corrected copy of the report, which</p> <p>22 was then sent on to you.</p> <p>23 Q When you spoke with Mr. Marcus on January</p> <p>24 2, did he suggest to you the alleged error in your</p> <p>25 report under Section 3.3.1.3?</p>	<p>1 my report since I turned it in on the 22nd of</p> <p>2 December.</p> <p>3 Q Do you know who Louise Stilp is, Dr. Agee?</p> <p>4 A Yes.</p> <p>5 Q Who is Louise Stilp?</p> <p>6 A He is one of the inventors of the '144</p> <p>7 patent.</p> <p>8 Q Have you ever spoken with Mr. Stilp?</p> <p>9 A No, I haven't.</p> <p>10 Q Do you know who Curtis Knight is?</p> <p>11 A Yes, I do.</p> <p>12 Q Who is Curtis Knight?</p> <p>13 A He is one of the inventors of the '144</p> <p>14 patent.</p> <p>15 Q Have you ever spoken with Mr. Knight?</p> <p>16 A No, I have not.</p> <p>17 Q Who is John Webber?</p> <p>18 A Just make sure.</p> <p>19 It is a trick question; right?</p> <p>20 Q Didn't mean for it to be a trick question.</p> <p>21 I apologize.</p> <p>22 Let me ask it this way: John Webber is a</p> <p>23 named inventor on the '144 patent; right?</p> <p>24 A That's correct.</p> <p>25 Q Have you ever spoken with Mr. Webber?</p>
Page 155	Page 157
<p>1 MR. MARCUS: I am going to object to the</p> <p>2 phrasing of that as misleading and mischaracterizing</p> <p>3 his testimony. He didn't say it was an alleged error;</p> <p>4 he said it was.</p> <p>5 A Yes, I stated it was an error.</p> <p>6 Q When you spoke with Mr. Marcus on January</p> <p>7 2, did he suggest to you that you made an error in the</p> <p>8 first bullet point under Section 3.3.1.3 of your</p> <p>9 report?</p> <p>10 A I can't recall if he suggested to me that</p> <p>11 he made an error or if he said, "Brian, you made an</p> <p>12 error. Go take a look at it."</p> <p>13 It was a fairly -- it was fairly clearly an</p> <p>14 error. And -- and I -- and I could see that it was an</p> <p>15 error as soon as I saw it. So, I don't know if the</p> <p>16 term -- if the term "suggestion" is relevant here.</p> <p>17 Q Prior to the January 2 conversation with</p> <p>18 Mr. Marcus, is it fair to say that you did not believe</p> <p>19 that you made an error in your report by including the</p> <p>20 language that appears in the first bullet point under</p> <p>21 Section 3.3.1.3 of your December report?</p> <p>22 MR. MARCUS: Objection. Mischaracterizes</p> <p>23 his testimony.</p> <p>24 A Prior to January 2, I was not aware that I</p> <p>25 had made an error in my report. I had not looked at</p>	<p>1 A No, I have not.</p> <p>2 Q Can you please turn to Page 10 of your</p> <p>3 December report.</p> <p>4 And I'll tell you what my question is, I</p> <p>5 will give you a chance to read it.</p> <p>6 A Okay.</p> <p>7 Q The third paragraph from the bottom that</p> <p>8 begins with, "From this passage" --</p> <p>9 A Okay.</p> <p>10 Q -- appears to be purporting to distinguish</p> <p>11 the timing taught by Kono with the way GPS signals are</p> <p>12 used in the '144 patent.</p> <p>13 And my question is, can you explain to me</p> <p>14 how the language you have in the third paragraph from</p> <p>15 the bottom on Page 10 of your December report differs</p> <p>16 from the way GPS signals are used in the '144 patent?</p> <p>17 MR. MARCUS: Can you read that whole thing</p> <p>18 back to me.</p> <p>19 (The reporter read the record as</p> <p>20 requested.)</p> <p>21 MR. MARCUS: I object that that's a --</p> <p>22 assumes facts not in evidence, is vague and ambiguous,</p> <p>23 somewhat confusing.</p> <p>24 A So this passage is addressing the ways --</p> <p>25 the way timing information is generated in Kono. And,</p>

40 (Pages 154 to 157)

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Brian G. Agee, Ph.D. January 24, 2007

Page 170	Page 172
<p>1 Q Oh, if you look at Page 5.</p> <p>2 A Oh, I was looking at Page 6. My apologies.</p> <p>3 Yes, it is dated November 11, 2006. The</p> <p>4 Certificate of Service was dated December 11, 2006.</p> <p>5 Q Okay. But do you recognize this document</p> <p>6 as the document giving the TruePosition's proposed</p> <p>7 claim constructions that you used to formulate in</p> <p>8 coming to your opinions?</p> <p>9 A Yes, I do.</p> <p>10 Q And when you -- you referred to this today</p> <p>11 throughout the deposition, when you were talking about</p> <p>12 the proposed claim constructions.</p> <p>13 Is -- these are the two documents you were</p> <p>14 referring to; is that correct?</p> <p>15 A Yes; yes, they were.</p> <p>16 Q In forming the opinions that you expressed</p> <p>17 in your report, did you consider the prosecution</p> <p>18 history or file wrapper of the '144 patent?</p> <p>19 A Oh, yes.</p> <p>20 Q Referring again to Agee Exhibit 7, which</p> <p>21 was TruePosition's Cumulative Identification of Claim</p> <p>22 Terms and Proposed Constructions.</p> <p>23 When you were given this document, did you</p> <p>24 read through the claim constructions?</p> <p>25 A Yes, I did.</p>	<p>1 filled in other than the introduction and the section</p> <p>2 on legal summaries, or legal standards?</p> <p>3 A No, it did not.</p> <p>4 Q Would it be fair to characterize it as just</p> <p>5 a proposed outline for the way you would go through</p> <p>6 the report?</p> <p>7 MR. PARKS: Objection to the form of the</p> <p>8 question. Leading.</p> <p>9 A I -- with the exception of -- of the</p> <p>10 section on legal -- on -- with the exception of</p> <p>11 Section 3.1.</p> <p>12 Q On legal standards?</p> <p>13 A Which was fairly complete; and which I was</p> <p>14 expected to understand, and not modify.</p> <p>15 Q Okay.</p> <p>16 A Yes.</p> <p>17 Q So with the exception of that particular --</p> <p>18 A Yes.</p> <p>19 Q And then you also did make changes to the</p> <p>20 introduction section; is that correct?</p> <p>21 A Yes, I did.</p> <p>22 Just for what it's worth, I might add that,</p> <p>23 in Section 3.1 I did reformat some of it. Because you</p> <p>24 lawyers like really long run-on sentences, and I was</p> <p>25 having a really hard time parsing one or two of them.</p>
Page 171	Page 173
<p>1 Q And did you agree with the claim</p> <p>2 constructions?</p> <p>3 A After I went through them and fully</p> <p>4 understood them, yes, I did agree with them.</p> <p>5 Q Okay. When you were given Agee Exhibit 6,</p> <p>6 which is Preliminary Claim Constructions As of</p> <p>7 November 22, 2006, for Andrew, did you read through</p> <p>8 those claim constructions before formulating your</p> <p>9 opinions?</p> <p>10 A Yes, I did.</p> <p>11 Q And did you agree with their claim</p> <p>12 constructions?</p> <p>13 A On several counts, no, I didn't.</p> <p>14 Q Okay. And in your report did you express</p> <p>15 some of your disagreements?</p> <p>16 A Yes, I did.</p> <p>17 Q Okay.</p> <p>18 A Disagreements and ambiguities.</p> <p>19 Q Okay. I think earlier today you testified</p> <p>20 that I provided you with, I believe you used the word,</p> <p>21 a draft of your report.</p> <p>22 Do you recall that?</p> <p>23 A Yes.</p> <p>24 Q Okay. In the -- in the draft that you</p> <p>25 testified that I provided you, did it have any text</p>	<p>1 Q Okay.</p> <p>2 A So some of the nonlawyerly organization in</p> <p>3 there was actually added by me.</p> <p>4 Q If I could just have you look at Agee</p> <p>5 Exhibit 1 and Agee Exhibit 2.</p> <p>6 And Agee Exhibit 1, I believe, has been</p> <p>7 referred to today as your December report; is that</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q And Agee Exhibit 2, I think, has been kind</p> <p>11 of referred to today at your January report; is that</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q Okay.</p> <p>15 A My January 3 report.</p> <p>16 Q January 3 report.</p> <p>17 And I also believe, sort of, earlier today</p> <p>18 there was a question about whether the -- the report</p> <p>19 marked as Agee-2 was a supplement to your Agee Exhibit</p> <p>20 1.</p> <p>21 Do you recall that?</p> <p>22 A I recall that.</p> <p>23 Q Okay. In the report that you served on</p> <p>24 January 2, marked as Agee Exhibit 2, you didn't add</p> <p>25 anything to the report; is that correct?</p>

44 (Pages 170 to 173)

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C5

Brian G. Agee, Ph.D. January 24, 2007

Page 174	Page 176
<p>1 A That's correct.</p> <p>2 Q Okay. You only deleted a few sentences; is</p> <p>3 that correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. And that's because -- is it because</p> <p>6 you never intended to include those sentences to begin</p> <p>7 with --</p> <p>8 MR. PARKS: Objection to the form of the</p> <p>9 question. Leading.</p> <p>10 MR. MARCUS: Well, let me rephrase it.</p> <p>11 BY MR. MARCUS:</p> <p>12 Q The deletions, the sentences that were</p> <p>13 deleted out of the report marked as Agee Exhibit 2,</p> <p>14 was the reason that you took those out that you never</p> <p>15 intended them to be in there, when you served Agee</p> <p>16 Exhibit 1?</p> <p>17 MR. PARKS: Objection to the form of the</p> <p>18 question. Leading.</p> <p>19 A The section -- the sentences that I had</p> <p>20 removed were not intended to be in the document; they</p> <p>21 were erroneous, they did not reflect my opinion.</p> <p>22 Q And that's at the time -- they didn't</p> <p>23 reflect your opinions at the time you served your</p> <p>24 December report; is that correct?</p> <p>25 A That's correct.</p>	<p>1 You had asked me to look through the report</p> <p>2 and identify where -- where my -- my understanding of</p> <p>3 equivalence would have affected my analysis or my</p> <p>4 opinions.</p> <p>5 And I looked through the entire report, and</p> <p>6 this was the only section where there was -- where</p> <p>7 there were -- where there were substantive</p> <p>8 differences, or where my analysis would have been</p> <p>9 substantively changed.</p> <p>10 And I found, as I read it, that -- that my</p> <p>11 analysis was -- was so dependent on my</p> <p>12 misunderstanding of equivalence, that the only way I</p> <p>13 could -- I could -- I could express to this group the</p> <p>14 changes was to just rewrite the section.</p> <p>15 So I decided late last night that that's</p> <p>16 what I had to do.</p> <p>17 Q Okay.</p> <p>18 A And that's when I went and did this.</p> <p>19 Q So did I ask you to write what's been</p> <p>20 marked as Agee Exhibit 3?</p> <p>21 A No, you did not.</p> <p>22 Q Had you told me that you were going to be</p> <p>23 writing what's been marked as Agee Exhibit 3?</p> <p>24 A Not when -- not when I left the building</p> <p>25 last night.</p>
Page 175	Page 177
<p>1 MR. PARKS: Objection. Leading.</p> <p>2 A (Continued.) That's correct.</p> <p>3 Q Okay. I would like to look at what's</p> <p>4 marked as Agee Exhibit 3.</p> <p>5 I believe you testified that you drafted</p> <p>6 what has been marked as Agee Exhibit 3 last evening</p> <p>7 and then partially this morning; is that correct?</p> <p>8 A Yes, that's correct.</p> <p>9 Q When was the first time you showed what's</p> <p>10 been marked as Agee Exhibit 3 to me?</p> <p>11 A At -- somewhere between 7:30 and 8 o'clock</p> <p>12 a.m. this morning.</p> <p>13 Q So is it fair to say it was a couple of</p> <p>14 minutes before we walked into your deposition?</p> <p>15 A That's correct.</p> <p>16 Q Had I asked you to write anything regarding</p> <p>17 the section in your report titled "Kono fails to</p> <p>18 disclose or teach means for processing said data</p> <p>19 frames from cell sites, to generate a table"?</p> <p>20 A You had asked me to look through that</p> <p>21 section and ask myself what was -- what would</p> <p>22 change -- well, you had asked me to look through the</p> <p>23 report. And, once I identified that section as being</p> <p>24 where the -- where the issues were -- sorry. Let me</p> <p>25 back up.</p>	<p>1 I didn't know I was going to be writing</p> <p>2 this, when I left the building last night.</p> <p>3 Q And I just want to be clear, because I</p> <p>4 think there has been a lot of discussion today about</p> <p>5 claim construction. And I just want to make sure</p> <p>6 we're clear about what happened.</p> <p>7 When you formulated the opinions that you</p> <p>8 expressed in your reports today, or explained, where</p> <p>9 the parties provided claim constructions for specific</p> <p>10 terms in the '144 patent, or asserted claims of the</p> <p>11 '144 patent, is it correct that you always just used</p> <p>12 those proposed claim constructions to formulate your</p> <p>13 opinions?</p> <p>14 MR. PARKS: Objection to the form of the</p> <p>15 question.</p> <p>16 A Once I saw the claim constructions and once</p> <p>17 I understood the claim constructions, then from that</p> <p>18 point on I always used those claim constructions in</p> <p>19 formulating my opinions.</p> <p>20 So in some early drafts, before I saw the</p> <p>21 claims construction, I was -- I was doing it just</p> <p>22 based on common, ordinary usage; and probably within</p> <p>23 two or three days of starting the analysis, I was</p> <p>24 using the claims constructions.</p> <p>25 Q But when you reached your final opinions</p>

45 (Pages 174 to 177)

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C6

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TRUEPOSITION, INC.,

Plaintiff/Counterclaim-Defendant

vs.

CA No. 05-00747-SLR

ANDREW CORPORATION,

Defendant/Counterclaim-Plaintiff

VIDEOTAPED DEPOSITION OF DR. DAVID GOODMAN

New York, New York

Monday, January 15, 2007

Reported by:
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<p style="text-align: right;">Page 138</p> <p>1 Goodman</p> <p>2 essentially the last six or seven lines in</p> <p>3 the middle paragraph, and my statement to you</p> <p>4 a few minutes ago rearranged the words in</p> <p>5 those, in there, but essentially I think I</p> <p>6 conveyed the same information that they did,</p> <p>7 that this does, but changing base station one</p> <p>8 to switching station one.</p> <p>9 Q. And just to be clear, which part</p> <p>10 of -- could you read into the record for me</p> <p>11 which part of page 4 of the Kono translation</p> <p>12 that you're relying on discloses the lease</p> <p>13 square difference algorithm?</p> <p>14 A. Of course.</p> <p>15 Would you like me to read what Kono</p> <p>16 wrote or would you like me to paraphrase it</p> <p>17 in a way that seems more --</p> <p>18 Q. Go ahead and paraphrase it.</p> <p>19 A. -- better suited to answering your</p> <p>20 question.</p> <p>21 Q. Go ahead.</p> <p>22 A. Okay.</p> <p>23 So first of all, I'm going to have</p> <p>24 to change base station to switching station.</p> <p>25 So the next to last sentence in the middle</p>	<p style="text-align: right;">Page 140</p> <p>1 Goodman</p> <p>2 think that every genus that was known at the</p> <p>3 time that somebody wrote the prior art</p> <p>4 reference would be included. If somebody</p> <p>5 invented something later on, it might be hard</p> <p>6 to collect royalties from somebody using</p> <p>7 something that wasn't known to Kono, wasn't</p> <p>8 known. But somehow I think that somebody of</p> <p>9 skill in the art reading this, there is a lot</p> <p>10 of ways using time difference of arrival to</p> <p>11 calculate location, and that means square, at</p> <p>12 least square difference is one of them.</p>
<p style="text-align: right;">Page 139</p> <p>1 Goodman</p> <p>2 paragraph of page 4, which says the switching</p> <p>3 station 1 forwards these data to the position</p> <p>4 locating device 2. And then I would go up</p> <p>5 and say that these data is data such as</p> <p>6 difference in arrival time of position</p> <p>7 locating signals with respect to the various</p> <p>8 base stations and the position of the mobile</p> <p>9 equipment is calculated. So cut and past,</p> <p>10 but I'm just reading words.</p> <p>11 Q. And it's really in particular the</p> <p>12 phrase of the position of the mobile</p> <p>13 equipment is calculated that you contend</p> <p>14 disclosed the lease square difference</p> <p>15 algorithm?</p> <p>16 A. Well, the whole sentence as I have</p> <p>17 rearranged it, so.</p> <p>18 Q. Is it your understanding that when</p> <p>19 a reference discloses a general genus, a</p> <p>20 general way of doing something, that every</p> <p>21 specific implementation of that way is also</p> <p>22 disclosed in the prior art reference?</p> <p>23 MS. WALDRON: Objection. Vague.</p> <p>24 A. I think -- so I'm sure this is a</p> <p>25 legal issue, but as an engineer, I would</p>	<p style="text-align: right;">141</p>

36 (Pages 138 to 141)

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<p style="text-align: right;">Page 158</p> <p>1 Goodman</p> <p>2 we talked about reuse, where you can have the</p> <p>3 same physical channels used by different</p> <p>4 people in different parts of the metropolitan</p> <p>5 area.</p> <p>6 Q. The next limitation on page 17 is</p> <p>7 at least three cell sites?</p> <p>8 A. Yes.</p> <p>9 Q. Your opinion is that that's</p> <p>10 disclosed in Kono, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Because Kono discloses base</p> <p>13 stations, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And in your view, cell sites</p> <p>16 encompass base stations?</p> <p>17 A. Yes.</p> <p>18 Q. Well, the next claim limitation on</p> <p>19 page 17 is equipped to receive signals sent</p> <p>20 by multiple mobile cellular telephones. This</p> <p>21 is still claim 22.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Your opinion is that that's</p> <p>25 disclosed in Kono, right?</p>	<p style="text-align: right;">Page 160</p> <p>1 Goodman</p> <p>2 get back to basics here for a moment.</p> <p>3 Your position here is that if</p> <p>4 Geometrix is encompassed by the claims, then</p> <p>5 Kono invalidates the '144 patent, right?</p> <p>6 A. Yes, that's right. If someone puts</p> <p>7 Geometrix in the '144 circle, they are really</p> <p>8 stuck with Kono.</p> <p>9 Q. Can you give me any interpretation</p> <p>10 under which of the claims, under which</p> <p>11 Geometrix infringes the '144 patent?</p> <p>12 MS. WALDRON: Objection. Legal</p> <p>13 conclusion. Speculation.</p> <p>14 A. I can't do this sitting here. I</p> <p>15 don't know how much time Dr. Gottesman</p> <p>16 tried -- spent trying to do that and he</p> <p>17 completely failed, so I think that even if I</p> <p>18 went off for a month, if TruePosition hired</p> <p>19 me, I would be hard pressed to do any better</p> <p>20 than Dr. Gottesman did.</p> <p>21 Q. So you don't know of any</p> <p>22 construction sitting here right now under</p> <p>23 which Geometrix infringes the '144 patent; am</p> <p>24 I correct?</p> <p>25 MS. WALDRON: Same objection.</p>
<p style="text-align: right;">Page 159</p> <p>1 Goodman</p> <p>2 A. My opinion is that if somebody</p> <p>3 finds that disclosed -- if somebody finds the</p> <p>4 Geometrix is receiving signals from multiple</p> <p>5 mobile cellular telephones, they would have</p> <p>6 to admit that Kono technology is also</p> <p>7 receiving signals sent by multiple mobile</p> <p>8 cellular telephones.</p> <p>9 Q. How would one have to interpret the</p> <p>10 claims to say that Geometrix has equipment</p> <p>11 for receiving signals sent by multiple mobile</p> <p>12 cellular telephones?</p> <p>13 MS. WALDRON: Objection. Legal</p> <p>14 conclusion. Speculation.</p> <p>15 A. It's a very difficult question to</p> <p>16 answer because I think it is impossible. I</p> <p>17 can try to stretch my mind to think of some</p> <p>18 weird interpretation.</p> <p>19 Q. So it's impossible to or very</p> <p>20 difficult to say that this claim limitation</p> <p>21 equipped to receive signals encompasses</p> <p>22 Geometrix, correct?</p> <p>23 A. I really haven't done that</p> <p>24 analysis. I suppose I could.</p> <p>25 Q. Well, let me ask you this. Let's</p>	<p style="text-align: right;">Page 161</p> <p>1 Goodman</p> <p>2 Legal conclusion. Misstates.</p> <p>3 A. Right, absolutely correct.</p> <p>4 Q. Doesn't it follow then that there</p> <p>5 is no construction then of the '144 patent</p> <p>6 that you can envision under which Kono</p> <p>7 validates the '144 patent?</p> <p>8 MS. WALDRON: Objection. Legal</p> <p>9 conclusion. Confusing.</p> <p>10 A. I disagree with that. I keep going</p> <p>11 back to my picture that says just because</p> <p>12 it's impossible to put Geometrix in this '144</p> <p>13 circle, doesn't mean that it is impossible to</p> <p>14 put Kono outside the '144 circle.</p> <p>15 Q. When you rendered your report on</p> <p>16 invalidity, did you compare the claims of the</p> <p>17 '144 patent to Kono?</p> <p>18 A. Yes.</p> <p>19 Q. Did you compare the claims of the</p> <p>20 '144 patent interpreted so as to include</p> <p>21 Geometrix in the scope to Kono in rendering</p> <p>22 that opinion?</p> <p>23 MS. WALDRON: Objection. Vague.</p> <p>24 Legal conclusion.</p> <p>25 A. Formed an opinion as to how</p>

41 (Pages 158 to 161)

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<p style="text-align: right;">Page 162</p> <p>1 Goodman</p> <p>2 somebody would have to interpret the claims</p> <p>3 to find these elements in Geometrix, and then</p> <p>4 I tried to find out if under that</p> <p>5 interpretation the claims would be covered by</p> <p>6 Kono.</p> <p>7 Q. Would you be able to write that</p> <p>8 interpretation out for us the way that you</p> <p>9 provided us with your own construction this</p> <p>10 morning?</p> <p>11 MS. WALDRON: Objection.</p> <p>12 Compound.</p> <p>13 A. What would you like me to write?</p> <p>14 Q. The interpretation.</p> <p>15 A. Just write down what I said?</p> <p>16 Q. Yes.</p> <p>17 A. Okay, sure.</p> <p>18 Q. Just so we're clear, this is a</p> <p>19 construction that you believe not to be</p> <p>20 correct?</p> <p>21 A. Yes, that's true. I don't think</p> <p>22 that a correct construction would -- I</p> <p>23 certainly don't think that Dr. Gottesman has</p> <p>24 found that a correct construction would prove</p> <p>25 that Geometrix infringes the '144 patent.</p>	<p style="text-align: right;">Page 164</p> <p>1 Goodman</p> <p>2 Compound. Overbroad. Legal</p> <p>3 conclusion.</p> <p>4 Q. Is there an easier claim that you</p> <p>5 can deal with more simply?</p> <p>6 A. I'm not trying to save work. So if</p> <p>7 you prefer claim 1, I'll work on that one. I</p> <p>8 think it is more detailed than some of the</p> <p>9 others.</p> <p>10 Q. Why don't we do claim 22.</p> <p>11 A. Okay, that might take less time.</p> <p>12 MS. WALDRON: Same objections for</p> <p>13 the record. Compound. Overbroad.</p> <p>14 Legal conclusion.</p> <p>15 A. Essentially you're asking me to do</p> <p>16 Dr. Gottesman's job, so can I refer to his</p> <p>17 report, because I assume that's what he was</p> <p>18 asked to do by TruePosition?</p> <p>19 Q. You rendered an invalidity report,</p> <p>20 and each time that I asked you for the basis</p> <p>21 for why it is that you think it is invalid,</p> <p>22 you keep telling me, well, if the claims</p> <p>23 encompass Geometrix, then the patent is</p> <p>24 invalid.</p> <p>25 A. Right.</p>
<p style="text-align: right;">Page 163</p> <p>1 Goodman</p> <p>2 Q. Why don't you write out --</p> <p>3 A. Write out the answer to the</p> <p>4 question. Can I ask the reporter to read it</p> <p>5 to me slowly and I'll write down what I said.</p> <p>6 Do I need another exhibit?</p> <p>7 Q. Yes, why don't we give you an</p> <p>8 exhibit.</p> <p>9 (Plaintiff's Exhibit 469, Blank</p> <p>10 Piece of Paper, marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. The court reporter has just handed</p> <p>13 you a blank sheet of paper labeled 469, and</p> <p>14 I'd like to you write down the interpretation</p> <p>15 of the patent that you disagree with that</p> <p>16 would encompass Geometrix and at the same</p> <p>17 time show that Kono invalidates the '144</p> <p>18 patent under that interpretation.</p> <p>19 MS. WALDRON: Objection.</p> <p>20 Compound. Overbroad. Legal</p> <p>21 conclusion.</p> <p>22 A. Any particular claim or all of the</p> <p>23 asserted claims?</p> <p>24 Q. Claim one.</p> <p>25 MS. WALDRON: Objection.</p>	<p style="text-align: right;">Page 165</p> <p>1 Goodman</p> <p>2 Q. What I want to know is the precise</p> <p>3 assumptions that you're making, the precise</p> <p>4 construction under which that invalidity</p> <p>5 opinion becomes relevant to this case.</p> <p>6 MS. WALDRON: Objection.</p> <p>7 Argumentative.</p> <p>8 A. Is your answer that I consult</p> <p>9 Gottesman since he probably spent a long time</p> <p>10 doing that?</p> <p>11 Q. Sure, you can.</p> <p>12 A. Can I have a copy of his report?</p> <p>13 Q. Sure.</p> <p>14 What if I gave you TruePosition's</p> <p>15 constructions, would that be what you're</p> <p>16 looking for?</p> <p>17 A. I think you're asking me to find</p> <p>18 some way of proving -- find some claims</p> <p>19 construction in which I can prove Geometrix</p> <p>20 infringes the '144 patent.</p> <p>21 Q. And that Kono invalidates the '144</p> <p>22 patent.</p> <p>23 A. Yes.</p> <p>24 Q. I'm just simply trying to find out</p> <p>25 the basis for your opinion in the invalidity</p>

42 (Pages 162 to 165)

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CERTIFICATE OF SERVICE

I, James D. Heisman, hereby certify that on this 11th day of June, 2007, I caused a true and correct copy of the foregoing **APPENDIX C TO TRUEPOSITION'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO EXCLUDE THE INVALIDITY TESTIMONY OF DR. DAVID GOODMAN PURSUANT TO FEDERAL RULE OF EVIDENCE 702** to be served upon the following individuals in the manner indicated below:

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